IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 2224 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 07/12/2004 in WPMP No.27169 of 2004 in WP NO : 20737 OF 2004 on the file of the High Court.)

Between:

Smt. Lanka Lata, W/o. Suri Babu,
R/o. H.No. 24-209/2, Indira Colony, Gajuwaka, Visakhapatnam-26.

..... APPELLANT

AND

1 Smt. Pulicherla Rajeswari, W/o. Dr. P. Murali Krishna,
R/o. 16-149/4, Mehar Nagar, Gajuwaka, Visakhapatnam-26.
2 The Election Officer-cum-Commissioner, Gajuwaka Municipality,

Gajuwaka, Visakhapatnam-26.
3 The Chairman, Gajuwaka Municipality, Gajuwaka,
Visakhapatnam-26.
4 Smt. Chitrada Padmaja, W/o. V. Satyanarayana,
R/o. Gajuwaka, Visakhapatnam.
5 Smt. M. Siva Lakshmi, W/o. Appa Rao,
Gajuwaka, Visakhapatnam.
6 Smt. Adari Uma, W/o. Mahesh,
Gajuwaka, Visakhapatnam.
7 Smt. Anga Indumati, w/o. Raju,
Gajuwaka, Visakhapatnam.
8 P. Bhavani, W/o. Raju,
Gajuwaka, Visakhapatnam.

Respondents 3 to 8 are not necessary parties to this W.A.

.....RESPONDENT(S)

Counsel for the Appellant:MR.ANGURU NARAYANA RAO

Counsel for the Respondent No.1: Mr.V.Rajagopal for Mr.D.V.S.S.Raju

Counsel for the Respondent No.2: The G.P. for Municipal Administration and Urban Development.

Counsel for the Respondent No.3: Mr.Dammalapati Srinivas

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

On 7th December, 2004, learned single Judge issued rule in the writ petition and called for the record. Notice was also directed to be issued to the respondents. But on the interim application, single Judge remarked that no interim order could be granted at that stage. Non-grant of order of stay is subject matter of the present appeal filed by the petitioner-appellant.

Writ Petition has been filed by the petitioner-appellant questioning the order passed by the Election Tribunal (Senior Civil Judge, Gajuwaka) holding the election of the petitioner-appellant to be void and consequently issuing a declaration that the first respondent is duly elected Councilor of 12th Ward of Gajuwaka Municipality.

The very fact that learned single Judge found some substance in the writ petition and for that reason issued rule nisi, in our opinion, was sufficient to suspend the operation of the order of the Senior Civil Judge in E.O.P No.3 of 2000. Non-staying of such order will render the writ petition itself infructuous. In case learned single Judge was of the view that there was no prima facie case for grant of stay, there was no occasion for issuing rule nisi in the writ petition. As such, impugned order not granting stay is not sustainable.

Accordingly, appeal is allowed. Impugned order dated 7-12-2004 dismissing W.P.M.P.No.27169 of 2004 is set aside. WPMP No.27169 of 2004 is allowed. Operation of the order passed by Senior Civil Judge, Gajuwaka dated 29th September, 2004 shall remain suspended during the pendency of the writ petition.

Writ petition will be posted for being heard on **7th February, 2005** subject to part heard.

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DEVINDER GUPTA, CJ

20-12-2004

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M.NARAYANA REDDY, J

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